

MINUTES
SOLID AND HAZARDOUS WASTE CONTROL BOARD MEETING
MAY 8, 2003

Board Members Present:

Judy Lever, Chairperson; Craig Anderson, Vice-Chair; Richard White; John Newman; Joe Melling; Tom Probert; Cullen Battle; Lowell Peterson; Bill Doucette; Scott Widmer; Ken Alkema; Michael D. Brehm; Carlton Christensen.

Teleconference:

Dianne R. Nielson

Staff Members Present:

Dennis R. Downs, Executive Secretary; Brad T. Johnson, UST Executive Secretary; Marilyn Ratcliffe; Candace Bleazard; Dale Marx; Scott Anderson; Rusty Lundberg; Brad Maulding; Cheryl Prawl; Allan Moore; Ed Costomiris; Otis Willoughby; George Lukes; Marty Gray; Tom Ball; John Waldrip; Deborah Ng; Rusty Lundberg; Don Verbica; Rick Page; Allan Moore; Raymond Wixom.

Others Present:

Rick Rathbun, Dan Shru, Cindy King, Mark Williams, Kris Snow, Clint Warby, Tim Orton, Richard Rathbun, Jeff Haulicak, Craig Galli, Tom Kurkky, Todd Kimmell, David Blake, Patrick Noteboom, Roger Rasmussen, Wayne Christensen, Beth Niederman.

I. The meeting was called to order at 1:04 P.M.

II. Recognition of outgoing Board members

Joe Melling and Richard White were given a plaque in recognition of their participation on the Board. Joe served 10 years and Richard served 8 years.

Judy Lever expressed thanks and appreciation for their service.

Dennis Downs thanked these two gentlemen for their tremendous support to the Board. Rarely was there an occasion where they were not in attendance at the Board meeting. They have worked well with the DSHW staff members and have operated on a professional level, and there has been mutual respect between the Board and staff.

III. Introduction of new Board members

Carlton J. Christensen will represent municipal government and is currently the chair of the Salt Lake City Council. Carlton was first elected to the Salt Lake City Council in 1997 and re-elected in 2001. He was council vice-chair in 1998 and then council chair for the year 2000. Later, he became council vice-chair for the year 2002 and currently serves as Salt Lake City Council Chairman. Carlton has served on the board of directors for the Utah League of Cities and Towns.

He is an ex officio member of the Salt Lake City Airport Board, and was appointed by Governor Leavitt to be a member of the Utah Quality Growth Commission.

Carlton has been involved in many civic and political activities including the Salt Lake Planning Commission and Rose Park County Council.

After high school graduation, Carlton attended BYU and University of Utah. He is a graduate of the University of Utah.

Michael Brehm is an environmental consulting engineer in the Salt Lake City area. He has an extensive background in the environmental arena. He has a Bachelors Degree and Masters Degree in environmental resource management as well as biology from Pennsylvania State University, and a Master Degree in civil and environmental engineering from Utah State University. He has worked for R.E. Wight Associates, Terracon Consultants, and is currently the owner and principal of Brehm Environmental.

Judy Lever extended a welcome to the new Board members.

IV. It was motioned by Bill Doucette and seconded by Joe Melling, and unanimously carried that the Minutes of April 10, 2003 be approved as submitted.

V. Appointment of New Underground Storage Tank Executive Secretary

Brad Johnson, now the Director of the Division of Environmental Response and Remediation, has been acting as the Executive Secretary to the Board regarding underground storage tank issues. Dianne Nielson asked the Board's concurrence to appoint Brad to be the Executive Secretary for the Underground Storage Tank issues.

****It was moved by John Newman and seconded by Scott Widmer, and unanimously carried that approval be given for the appointment of Brad Johnson as the Executive Secretary to the Utah Solid and Hazardous Waste Control Board.**

VI. Underground Storage Tank issues - Brad Johnson

Underground Storage Tanks (UST) General Statistics:

PROGRAM	March	April	Difference from March
Number of current tanks with a Certificate of Compliance	4,007	4,008	1
Number of Tanks with a Certificate of Compliance on the PST Fund	3,575	3,574	(1)
Total Number of Tanks Regulated	4,176	4,181	5
*Total Number of LUST sites closed to date	3,558	3,574	16
Total PST sites with claims or expected claims	464	468	4
Open + Closed Grand Total	\$87,486,613.14	\$89,630,601.37	\$2,143,988.23

PROGRAM	March	April	Difference from March
PST Fund Balance	(\$69,154,711.00)	(\$70,112,640.00)	(\$957,929.00)
PST Assets Total	\$13,037,371.36	\$12,116,396.09	(\$920,975.27)
Loan Fund – Total Loans Made to Date*	67	68	1
Total Amount Loaned to Date	\$1,822,642.60	\$1,847,797.60	25,155.00

Mr. Johnson stated that the overall objective of the UST Program is being accomplished. One indicator of this is the increasing number of leaking underground storage tank (LUST) sites that are being closed.

VII. Hazardous Waste Facilities issues - Fred Nelson, Attorney General's Office/Brad Maulding

Proposed Stipulation and Consent Agreement between the Board Reilly Industries

This is a resolution of a long-standing action that has been ongoing for about four years. Last October Dennis Downs referred this to the AG's office because it didn't seem to be going anywhere. There was a conflict between EPA's position, Reilly's position, and the State was caught in the middle trying to bring the two into agreement in a complex case.

Mr. Nelson started with the General Council's Office at EPA headquarters level. The issue involved the National interpretation of the wastewater treatment exemption. Reilly maintained a certain legal position with respect to this exemption, and EPA was not quite sure what their position was. Region VIII had taken a position and was trying to clarify this issue on a national level.

Over the next few months of working with Region EPA VIII, national headquarters, and Reilly, a settlement was agreed upon. The reason they were able to come to a settlement is that Reilly is no longer operating their facility. They were tied to Geneva in getting products from Geneva and the applicability of the wastewater treatment exemption went away. This facility is no longer operating; consequently this eliminated, this cancelled the need to make a regulatory decision. The question was just resolving the past violations, and a settlement was agreed upon. The settlement includes a total penalty amount of \$39,095.

A public comment period was initiated on March 30, 2003, and ended on April 28, 2003. No public comments were received.

****It was moved by Scott Widmer and seconded by Bill Doucette, and unanimously carried that Stipulation and Consent Order #9908025 between Reilly and the Solid and Hazardous Waste Control Board be approved.**

VIII. Settlement negotiations process discussion - Fred Nelson, Attorney General's Office

While working with Reilly Industries, Mr. Nelson thought it would be important to discuss some issues with the Board, and perhaps come back to the Board at a later time with a policy document for the Board to look at and consider. Mr. Nelson deals with the five other boards in the Department of Environmental Quality. They all operate a little differently and that's appropriate. With respect to dealing with settlement of violations, there is a wide range of procedures that are used for the different boards. The reason for that is that the board, under State law, is the settlement authority. As a consequence, the relationship between the Executive Secretary as the negotiator of settlements, and the board's approval authority has caused some concerns.

Different boards have handled settlements different ways. The Executive Secretary has statutory authority to receive delegation, from the board, for enforcement authorities, and settlement authorities, but the ultimate decision rests with the Board. This is in respect to the determination of violations. The board or the executive secretary does not have the authority to impose a penalty. If a settlement fails, by statute the matter goes to court. Some of the boards have handled enforcement actions by giving the board copies of the settlements. The board then reviews them to see if it is consistent with the appropriate penalty policy and interpretation of the rules, but they're not brought to the board for approval. They are approved by the Executive Secretary, which is the norm rather than the exception. When this board was initially organized, the decision was made to specifically look at each settlement individually. As the board looks at their agendas, there are regularly a number of settlement items for approval. That doesn't happen as much with the other Boards within the Department. If the Executive Secretary feels like a settlement is unique, or has an unusual issue, or involves a policy decision, it is brought to the board.

There is a second procedure, which also differs with respect to the different ways that boards deal with issues. They differ in the way issues are referred to the AG's office. The specific referral rule in the statutes, with respect to hazardous waste, says that the board refers matters to the AG's office for filing a complaint, with the exception of the Underground Storage Tank Program, and the statute allows the Executive Secretary of UST to file a complaint. Historically, it has usually come through the board.

There are some circumstances where it has seemed a waste of resources to put items on the agenda, i.e., if a company is issued a Notice Of Violation (NOV), the NOV is not contested, and the company is simply refusing to negotiate a settlement. It has been deemed appropriate for the other Boards to simply refer it to the AG's office. They have delegated the Executive Authority to just say, "I've issued a Notice of Violation, the notice is final, there has been no contesting of it, they refuse to comply with the requests that have been made to them, and we're referring this to the AG's office."

There are also issues that SHW has dealt with in the past where a decision needs to be made whether to enter a settlement as a Consent Decree in the courts, or to do it as an Administrative Order. Mr. Nelson offered to clear up a lot of these procedures and questions, and develop a list of policies and processes for the board so that there can be some procedure set in place, and then present it to the board for approval.

Scott Widmer felt that this would be worthwhile information to receive as a board. He also felt the board needed to be educated on how much flexibility they are allowed to have.

John Newman asked if the State law would need to be standardized as it applies to boards within DEQ. Mr. Nelson said this could possibly happen. Mr. Newman felt that the public would be better served if boards were more standardized.

Michael Brehm asked if the Mr. Nelson's analysis would include characterization of whether the regulated community would benefit or if it would cause a burden. Mr. Nelson felt that it would be beneficial to receive input from the regulated community while developing a policy document.

IX. Planning/Used Oil - Cheryl Prawl

Proposed Stipulation and Consent Agreement between the Board and Golden Eagle

When this agreement was presented to the Board in December, there were several who did not agree with the Supplemental Environmental Project (SEP) that was proposed. Golden Eagle retracted their offer to do a SEP and renegotiated a Stipulation and Consent Agreement.

There is one more issue that was added for a new Notice of Violation (NOV), because Golden Eagle was using a non-permitted transporter for transporting used oil. An additional penalty of \$1,500 was added on to the \$34,000 of the original penalty, which would raise the penalty to \$35,500.

This agreement went out for public comment May 4, 2003 and concluded on June 2, 2003.

Cullen Battle asked if Ms. Prawl felt there was a significant risk, apart from the cost, that she would not be able to establish the findings that are contained within the NOV. Ms. Prawl expressed that the time factor involved was a big issue, i.e., "How long do we want to drag this out?" Her staff has spent considerable time on this issue, and presently this company is in compliance.

Cullen Battle asked about the current violation that was added onto the SCO, which appeared to him to mean they were not currently in compliance. It bothered him that people who cooperate and pay the big penalties do not get consideration, but people who dig their heels in and fight get away with a lot less. He felt he would not be able to approve this SCO when it comes before the Board in June.

X. Hazardous Waste Management Section - Allan Moore

Stipulation and Consent Agreement (SCA) between the Board and Univar USA Inc.

Univar is a chemical distributor throughout the Salt Lake Valley. Initially they came to DSHW as a result of a tank release of nitric acid last June. They have worked with the Department numerous times in investigating the site. Initial findings concluded that there were chlorinated solvents, ether, alcohol, and a nitric acid spill. Most of the contamination is from long-term housekeeping practices at the site. This company plans to remain on site and continue to use their property as a distribution facility.

This SCA addresses oversight of corrective action at this facility. The Agreement calls for a submission of a site investigation report as well as a subsequent remedial action plan to address any corrective action that needs to take place on the site for contaminated soil and groundwater.

The public comment period commenced on March 31, 2003 and concluded on April 30, 2003. There have been no substantial comments to date.

****It was moved by Cullen Battle and seconded by Tom Probert and unanimously carried that the Stipulation and Consent Agreement between the Board and Univar be approved.**

XI. Commercial/Federal Facilities

- A. Envirocare request for variance from the 250 kilogram/day quantity limits for a treatability study (Information item only) Don Verbica/George Lukes

During the April 10, 2003 Board meeting the Board required that another public comment period be initiated. During the first treatability study, Envirocare was able to treat approximately 6,000 kilograms of waste. They are now asking to be able to treat the remainder of about 16,000 kilograms during this current treatability study.

The public hearings to receive comment on the variance request will be held on Tuesday, May 13, and Thursday, May 16, 2003, at 7:00 p.m. in the Tooele County Courthouse.

Carlton Christensen asked if this was a new technology for facilitating the processing of hazardous waste and if the results would have value for the state. Mr. Verbica responded that this methodology is in place to test a unit, which is a vapor vacuum thermal absorption method. The idea is to drive off the organics and collect them in another area, and then perform further treatment on the organics. It is anticipated that the Division will be able to use these results to help in the permitting process and permitting the shipment.

The Board requested the latest copy of the Hazardous Waste Rules and Solid Waste Rules. Mr. Widmer pointed out that his copy of the Rules were outdated. He asked Don how he would know, when he approves something, if he is following federal law.

Rick Rathbun explained that the AG's office reviews the Board packets before they come to the Board to see if there are any deficiencies. In a case where a Board member raises a specific concern, it will be carefully looked at and answers given to any questions that might arise. The Board can also call individual DSHW staff members to get answers or guidance according to the state and federal law.

John Newman asked what the need is of having a Board, or in other words what is the purpose of the Board ? He observed that all of the issues of the law can be looked at and reviewed by different staff members. Rich Rathbun referred Mr. Newman to the authority and the powers of the Board, which defines several functions that the Board serves, i.e., rulemaking, administrative hearings, and to some degree, oversight of the program. By statute, the Executive Director of the Department and the Executive Secretary are authorized to implement the program. It would be appropriate for a Board member to ask for guidance according to keeping state and federal law.

Don Verbica added that the Division is an authorized program by the federal government to run the RCRA program in Utah in lieu of EPA. The Utah Rules meet the requirements of the federal government.

B. Envirocare request for a state-specific treatment variance for U103 (dimethyl sulfate and U213 (tetrahydrofuran). Don Verbica/Otis Willoughby

This treatment variance consists of eight tanks that are about 8 feet long and approximately 5,000 cubic feet. The treatment standard for U103 is chemical oxidation or combustion, and the treatment standard for U213 is combustion. These materials are metal drums and do not tend to leak. Envirocare is requesting a variance so that they can dispose of these tanks without further treatment. This was an information item.

C. Envirocare request for site-specific treatment variance for P120 (vanadium pentoxide) Don Verbica/Otis Willoughby

This specific waste stream consists of approximately 30 gallons of glass pieces resulting from a vitrification treatability study conducted by a university. The treatment standard for vanadium pentoxide is stabilization, which means they would have to grind up the glass again for stabilization, which would then release the materials that were vitrified.

DSHW is recommending that this treatment variance be approved, and with that they would in capsule the 30-gallon container with a two-inch thick layer of plastic. This will ensure that leaching of the waste is minimized. This was an information item.

D. Stipulation and Consent Order (SCO) between the board and Clean Harbor Grassy Mountain Facility, LLC

This Stipulation and Consent Agreement to resolve a Notice of Violation that was issued in January 2003. There are two issues that were self notified by the facility:

- They had a fire in their landfill cell
- Did not have a certification on a generator certifying that the sample was representative of the waste stream.

This SCO includes a total penalty of \$4,108.

A public comment period started on May 6, 2003 and will conclude on June 5, 2003.

XII. Chemical Demilitarization Issues - Marty Gray

A. TOCDF Update

At the last Board meeting the Board was informed of an incident where some water and VX were inadvertently mixed in a tank, which caused a reaction. Subsequently, that mixture, hydrolosate, was decontaminated using bleach to a level where the agent was below 20 parts per billion. Once the agent was destroyed to that level, the waste stream could be fed through the secondary chamber of the liquid incinerators. This waste has now been cleaned out and destroyed.

Presently there have been a little over 1,200 of the approximately 7,055 M55 VX rockets destroyed. This amounts to about 17% of the VX rockets in the stockpile.

The VX rockets are the first to be destroyed because they are considered to be the most dangerous and highest threat.

Processing was stopped on Saturday, May 3, 2003. There was an agent alarm that was in an observation area, which is a level C area and does not require people do not wear a mask. Agent VX was confirmed in that area, but below 1 TWA, and was not an immediate hazard. Upon reviewing the cause of this release, it was determined that there had been a temporary change made to some piping associated with the decontamination system. The method they used to change this piping allowed the decontamination solution from hotter areas, level A & B, to back-wash into the C area. The temporary change has been taken off, the piping is back to normal, and there has been no further problem.

Bill Doucette asked if there were any employees in the C area at the time of the incident. Marty was not sure if they were in the exact area, but there were workers who were taken to the clinic for observation and there were no exposure symptoms manifested.

Scott Widmer asked if the new and improved safety policy that has recently been developed, is adequate and meeting the objectives expected. Mr. Gray agreed that the water that was left in the tank was definitely a mistake, but could not answer for the facility.

When TOCDF first started processing rockets at the facility, they performed a mini burn. This is where they do stack testing on certain parameters of their emissions. During this burn, they found that the particulate coming out of the stack was too high and discovered that the problem was related to the demister, which was not properly seated. Consequently, a blow-by situation occurred, where the particulate was getting around the demister in the pollution abatement system. They have switched to their spare demister, which makes it possible to start processing rockets again.

There was a trial burn on the deactivation furnaces scheduled for May 19, 2003, which was delayed until sometime in June 2003. They had problems monitoring the residue coming out of the deactivation furnace that caused alarms. These are not confirmed agent alarms but are an interferent so that they can continue the trial burn.

TOCDF made a special invitation for Board members to visit their facility and participate in a tour.

Deseret Chemical Depot (DCD) request for quantity variance

The Deseret Chemical Depot has submitted an application for a variance from the quantity limits for hazardous waste to be used in treatability studies. They expect that these studies will take place this year between May and October.

A 30-day public comment period was held beginning April 8, 2003 and concluded May 7, 2003. A public hearing was also held on April 29, 2003 and there were no comments received.

It was recommended that this variance request, which will allow two shipments of up to 250 kilograms of mustard hydrolysate to be shipped to Aberdeen Proving Ground, be approved. This will also allow the Army to conduct four treatability studies at DCD using up to 1,000 kilograms. They also request that this variance be allowed for one year, which is in accordance with the rules.

Mr. Gray was asked to explain the difference between mustard agent and mustard hydrolysate. Mustard agent is agent that comes directly from projectiles and is pure mustard. As the

treatability studies are performed on this blister agent, they decontaminate it using sodium hydroxide or bleach, and the residue is the decontaminated mustard hydrolysate, which is much less toxic than the agent. DCD will not be bringing any mustard agent in from another place. They will simply treat the mustard that is already on site.

****It was moved by Bill Doucette and seconded by Joe Melling and unanimously carried that DCD be allowed two shipments of up to 250 kilograms of mustard hydrolysate to APG, and four treatability studies at DCD using up to 1,000 kilograms of mustard related munitions for each study. The timeframe for this variance will be one year.**

XIII. Other

A. Board availability for the Board meeting on July 10, 2003.

Over the last number of years the Board has opted to cancel the July Board meeting, if there were no pressing issues. Mr. Downs wanted to get a sense from the Board if they would be available should a meeting be needed. There looked to be enough Board members to make a quorum that could attend a July meeting.

An updated copy of the Hazardous Waste Rules and Solid Waste Rules, and an updated copy of the organizational chart will be handed out to the Board at the June 12, 2003 meeting.

B. Questionnaire distributed by Judy Lever

Ms. Lever has initiated a questionnaire for DSHW staff to fill out. She is hoping that the answers to this questionnaire will help the Board become more aware of any changes or additions that need to be made for Board meeting procedures in the future, and educating the Board for future issues that may come up throughout the course of their tenure. These questionnaires will be filled out and given to Ms. Lever by the end of May.

XIV. The next Board meeting will be held June 12, 2003 at 1:00 p.m. in the DEQ Building #2 Conference Room.